

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

FIRST SET OF INFORMATION REQUESTS OF
FIBER TECHNOLOGIES NETWORKS, L.L.C.
TO SHREWSBURY'S ELECTRIC LIGHT PLANT

D.T.E. 01-70
November 8, 2001

Witness Responsible: Thomas R. Josie, General Manager, SELP

FIBERTECH 1-1: Please produce all documents referring or relating to Fibertech in the possession of SELP, including but not limited to communications with the Town or any other parties regarding Fibertech.

RESPONSE: We are not producing documents protected by the attorney-client privilege, the work product doctrine or documents exempt from disclosure under the public records laws. All other documents will be provided. Please note that copies of pleadings and correspondence to and from the DTE in this case have not been produced.

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FIBERTECH 1-2: Please identify all entities that have attachments on poles owned by SELP. Please specify the nature of such entity's business and the basis on which it is a "utility" or a "licensee" within the meaning of M.G.L. c. 166 § 25A, and the number and type of attachments each such entity has.

RESPONSE: SELP objects to the second part of this question on the grounds that it calls for legal conclusion. Without waiving this objection, SELP responds to the first part of the question as follows.

Verizon; which is eligible to utilize the provisions of G.L. c. 166, § 25A since it transmits intelligence by telephone in Massachusetts.

Digital; computer company. Negotiated an agreement outside of G.L. c. 166, § 25A, to attach its fiber optic cable to SELP poles for internal Digital communications because it would not appear to be a "licensee." Digital transferred its fiber some time ago to MCI Worldcomm, a company that appears to transmit intelligence by telephone to end users in Massachusetts.

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FIBERTECH 1-3: Please identify all other entities other than those identified in response to Request No. 2 that have requested attachments to poles owned by SELP.

RESPONSE: NEESCom, Adelphia Business Solutions and Fiber Technologies Networks, LLC.

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FIBERTECH 1-4: Please specify all services provided by SELP. For each such service, please state whether it uses cable or wires attached to poles in the Town. If such service uses pole attachments, state whether such attachments are located within the "power space."

RESPONSE: SELP objects to the this request on the grounds that it is overbroad, unduly burdensome and seeks information not relevant to the scope of these proceedings, namely, the examination by the Department of whether Fibertech is a "licensee" and whether its dark fiber is an "attachment" under G.L. c. 166, § 25A. SELP further objects to this request on the grounds that it is unintelligible, to the extent it seeks information using the unclear, ambiguous and undefined terms "services" and "service" and is not susceptible to answer. Without waiving its objections, SELP responds that SELP provides electric service to residential and commercial customers in Shrewsbury and Shrewsbury's Community Cablevision ("SCC") provides cable television service in Shrewsbury.

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FIBERTECH 1-5: Please state whether SELP uses fiber optic cable. If so, describe the extent and use of SELP's fiber optic facilities.

RESPONSE: SELP objects to this request on the grounds that seeks information not relevant to the scope of these proceedings. SELP further objects to this request on the grounds that is unintelligible to the extent that it seeks information on "the extent and use of SELP's fiber optic facilities." With waiving its objections, SELP responds that both SELP's electric division and SCC use fiber optic cable.

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FIBERTECH 1-6: Please state whether SELP provides or has offered to provide dark fiber to any entity and, if so, identify when and to whom.

RESPONSE: SELP objects to this request on the grounds that it seeks information not relevant to the scope of these proceedings. Without waiving its objection, SELP responds that it does not provide and it has not offered to provide "dark fiber" to anyone.

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FIBERTECH 1-7: Please state whether SELP has plans for future services. If so, state whether any capacity of the poles is reserved for such future services.

RESPONSE: SELP objects to this request on the grounds that it is overbroad, unduly burdensome and seeks information not relevant to the scope of these proceedings. Please refer to the Hearing Officer Ruling dated October 26, 2001 for further guidance on this issue. SELP further objects to this request on the grounds that it is unintelligible to the extent it seeks information, using the vague, ambiguous, and undefined terms "plans" and "future services" and is not susceptible to answer.

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FIBERTECH 1-8: Please identify all providers of telecommunications services (a) that provide service to end-users within the Town or (b) that have transmission facilities located within the Town, including wireless facilities; and specify when each such entity began providing service or transmission in the Town.

RESPONSE: SELP objects to this request on the grounds that it is overbroad, seeks information that is not relevant to the scope of these proceedings (see Hearing Officer ruling dated October 26, 2001), and is designed to oppress and create an undue burden or expense for SELP. Without waiving these objections, SELP responds that on information and belief, Verizon and AT&T Wireless provide service to end-users in Shrewsbury. SELP has no further information responsive to this request.

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FIBERTECH 1-9: Please confirm that SELP's denial of Fibertech's request for pole attachments was not for any reasons of lack of capacity.

RESPONSE: SELP's denial of Fibertech's request was not for lack of capacity. SELP has not performed a field survey or field engineering studies in this regard, nor was it required to, since Fibertech was not entitled to access SELP's poles.

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FIBERTECH 1-10: Please state whether SELP has the capacity on its poles to accommodate attachments for Fibertech fiber. If not, please explain in detail the capacity constraints on SELP's poles, produce any documents on which such reasons are based, state what steps SELP has taken to explore accommodations for Fibertech attachments; state how many poles SELP owns solely or jointly and of these, break down (a) the number of solely owned poles and the number of jointly owned poles; (b) the number of poles of each pole height used by SELP, (i.e., 35 feet, 45 feet, etc.).

RESPONSE: Please refer to SELP's response to FIBERTECH 1-9, which is incorporated herein by reference. SELP has not performed a field survey or any field engineering studies that would enable it to answer this question.

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FIBERTECH 1-12: Please confirm that SELP's has denial of Fibertech's request for pole attachments was not for any reasons of safety. If so, please explain such reasons in detail and provide any documents on which these reasons are based.

RESPONSE: Please refer to SELP's response to FIBERTECH 1-9, which is incorporated herein by reference. SELP's denial was not based on reasons of safety. SELP has not performed a field survey or field engineering studies in this regard.

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FIBERTECH 1-13: Please confirm that SELP's denial of Fibertech's request for pole attachments was not for any reasons of reliability.

RESPONSE: Please refer to SELP's response to FIBERTECH 1-9, which is incorporated herein by reference. SELP's denial was not based on reasons of reliability. SELP has not performed a field survey or field engineering studies in this regard.

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FIBERTECH 1-14: Please state whether Fibertech attachments have any impact on the reliability of SELP's poles or services. If so, please explain such reasons in detail and produce any documents on which such reasons are based.

RESPONSE: SELP does not know the answer to this request. Please refer to SELP's response to FIBERTECH 1-9, which is incorporated herein by reference.

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FIBERTECH 1-15: Please confirm that SELP's denial Fibertech's request for pole attachments was not as a result of generally applicable standards.

RESPONSE: SELP objects to this request on the grounds that it is unintelligible in that it seeks information related to "generally applicable standards." Without waiving its objections, please refer to SELP's response to FIBERTECH 1-9, which is incorporated herein by reference.

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FIBERTECH 1-16: Please state whether any generally applicable standards preclude Fibertech attachments on SELP poles. If so, please identify such standards and produce a copy thereof, and produce any documents supporting such reason.

RESPONSE: Please see response to FIBERTECH 1-15, which is incorporated herein by reference.

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FIBERTECH 1-17: Please state whether it is SELP's position that the wholesale provision of dark fiber is not a common-carrier telecommunications service subject to the authority of the Department of Telecommunications and Energy.

RESPONSE: SELP objects to this request on the grounds that it calls for a legal conclusion. SELP further objects on the grounds that it is unintelligible, to the extent that it seeks information using the vague, ambiguous and undefined terms, "common-carrier telecommunications service subject to the authority of" and therefore is not susceptible to answer.

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FIBERTECH 1-18: Please state whether the leasing of fiber optic capacity constitutes a common carrier service, and whether SELP is aware of telecommunications providers that offer such service. Identify any such providers. If SELP contends that such leasing does not constitute common carrier service, please state whether providers of such services identified are not common carriers by reason of providing such service.

RESPONSE: SELP objects to this request on the grounds that it calls for a legal conclusion. SELP further objects to this request on the grounds that it is unintelligible, to the extent that it seeks information on "whether providers of such services identified are not common carriers by reason of providing such service," and to the extent that it seeks information using vague, ambiguous and undefined terms such as "common carrier service" and therefore is not susceptible to answer.

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FIBERTECH 1-19: Please refer to Paragraph 27 of the Response of Shrewsbury Electric Light Plant in this matter. State when, to whom, and in what form of words "Mr. Josie specifically asked Fibertech whether it was transmitting intelligence by telephone, electricity, or cable television signals."

RESPONSE: A meeting took place in my office at SELP, 100 Maple Street, in Shrewsbury, MA. I do not recall the date. However, the meeting was with Mario Rodriguez and one other individual (whose name I cannot recall) from Fibertech. At that meeting, I asked Fibertech in substantially this form of words, the following question: "Do you provide phone service or CATV services." The response from Fibertech's personnel was something in the form of the following: "We do not provide any services. We lease fiber."

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FIBERTECH 1-20: Please refer to Paragraph 28 of the Response of Shrewsbury Electric Light Plant in this matter. Explain why the Global NAPs cases are irrelevant to the instant matter.

RESPONSE: SELP objects to this request on the grounds that it calls for a legal conclusion.

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FIBERTECH 1-21: Please state whether it is SELP's position that a fiber optic cable pole attachment is not an "attachment" within the meaning of M.G.L. c. 166 § 25A and 220 C.M.R. 45.02. If so, explain the basis for SELP's position.

RESPONSE: SELP objects to this request on the grounds that it calls for a legal conclusion. SELP further objects to this request on the grounds that it is designed to oppress and create an undue burden or expense for SELP. SELP further objects that on the grounds that SELP's Response to Fibertech's Complaint makes clear its position on this and related legal matters.

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FIBERTECH 1-22: Please state whether “the conveniences, appliances, instrumentalities, or equipment pertaining thereto, or utilized in connection therewith” referred to in M.G.L. c. 159 § 12(d) include dark fiber facilities. If not, explain why not.

RESPONSE: SELP objects to this response on the grounds that it calls for a legal conclusion.